



POLICE DEPARTMENT

August 17, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-23492
Police Officer Angelo Hurtado	:	
Tax Registry No. 964564	:	
Manhattan Court Section	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Angelo Hurtado, on or about May 24, 2021, while assigned to the 61 Precinct and off duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, said Officer wrongfully refused to submit to a chemical breath test to determine his blood alcohol concentration.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT-
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 25, 2023. Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal recommends that Respondent forfeit 30 suspension days, previously served.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified that at approximately 0030 hours on May 24, 2021, he was involved in a vehicular accident at the intersection of Woodhaven and Rockaway Boulevards in the 106 Precinct. He admitted that as he drove through the intersection in accordance with the traffic signal, he struck two pedestrians who appeared in front of his car, crossing against the light. He immediately stopped his car, in which his expectant wife and child were passengers, and checked on the condition of the pedestrians. Respondent testified that he called 911 and requested assistance. When the first police officers arrived at the scene, he identified himself as a Member of Service.

Numerous police officers, supervisors, and emergency personnel eventually responded to the scene (Dept. Ex. 1). One of the pedestrians was pronounced dead at the scene; the other

pedestrian was taken to a hospital but later succumbed to his injuries (Dept. Exs. 3, 4). Police officers were directed by the patrol supervisor to bring Respondent and his family to the 106 Precinct. He was eventually returned to the scene of the collision to meet a police officer from a Highway Patrol unit to undergo testing. The Highway officer performed two coordination tests, which Respondent passed. When the Highway officer asked Respondent to submit to a portable breathalyzer test, he refused.

Respondent testified that he refused the test on the advice of his union delegate¹. He stated that he did not trust the test but also offered that, at the time he refused the test, he was agitated and operating “on adrenaline” because of the stress of the accident and the presence of his family. Four supervisors completed Fitness for Duty Reports regarding Respondent’s condition at the scene; each supervisor found Respondent fit for duty (Resp. Ex. C). The Patrol Supervisor, who was one of the supervisors who completed a Fitness for Duty report, was disciplined for failing to ensure that Respondent remained at the scene and for failing to activate her Body Worn Camera (Dept. Ex. 5).

Respondent admitted that prior to the accident, he and his family had been at a friend’s house in Richmond Hill from approximately 2130-2330 hours. At this gathering, Respondent drank one beer and several sips of a second beer (Dept. Ex. 6 at 7-11). In addition to those beverages, he testified that he drank water and coffee. He acknowledged that earlier in the day, he and his family had patronized a restaurant for dinner in Manhattan but denied that he consumed any alcoholic beverages there (*Id.* at 14).

A hearing was conducted by the New York State Department of Motor Vehicles on February 2, 2022 into the circumstances of the collision; the Administrative Law Judge found no

¹ In his Department interview, the delegate denied providing advice to Respondent on whether he should take the portable breathalyzer test (Dept. Ex. 8 at 10).

evidence that Respondent “was speeding, suffered from any physical or mental impairment, was distracted, or was under the influence of alcohol or drugs” (Resp. Ex. B at 2). The judge further found that there was “no credible evidence that [R]espondent unlawfully operated his vehicle, or that the manner in which he operated his vehicle caused the fatal accident” (*Id.* at 2-3).

On June 28, 2023, the Office of Special Investigation, New York State Attorney General, issued a report on the collision, concluding that, based upon the evidence, no prosecutor could prove that Respondent committed criminally negligent homicide beyond a reasonable doubt (Resp. Ex. A at 11-12).

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on October 18, 2017, has pled guilty to refusing to submit to chemical breath testing to the prejudice of good order and discipline.

The presumptive penalty for refusing to submit to a breathalyzer or other appropriate test is 30 suspension days and dismissal probation; the aggravated penalty is termination and the mitigated penalty is 15 penalty days.

The Department Advocate has recommended that Respondent forfeit 30 suspension days, previously served, and be placed on a one-year period of disciplinary probation. Counsel for

Respondent argued that Respondent should have his 30 suspension days restored and that the mitigated penalty of 15 vacation days be imposed.

Counsel for Respondent argued that the imposition of the presumptive penalty would be manifestly unfair because the penalty was intended to be applied in situation where a Respondent refused a breath test after being involved in a shooting, not a situation in which he was involved in a vehicular accident which resulted in fatalities. He further argued that the penalty was arbitrary as it applies to a refusal to submit to chemical testing, as it mirrors the same presumptive penalties for commission of misdemeanors under state law, which represent far more serious misconduct. Since Respondent has not offered any evidence regarding the “legislative history” of the penalty recommendations compiled into the Disciplinary Guidelines, I find the former argument lacking in merit. As to the latter argument, I find that it, too, lacks merit.

In the case before the Tribunal, the gravamen of Respondent’s misconduct is that he refused to submit to chemical testing on the scene. The Patrol Guide requires such testing *for all operators involved in the collision* whenever there is a vehicle collision resulting in death, serious injury and likely to die, and critical injury (P.G. 217-02 [18], [19], [20][emphasis added]). To be clear: as a Member of Service, Respondent had no right to elect whether or not to submit to the portable breathalyzer test.

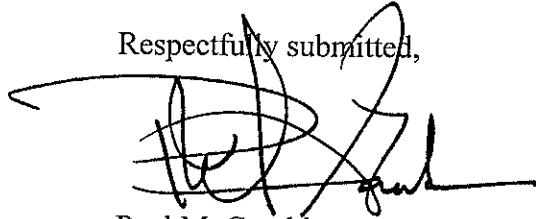
This offense represents serious misconduct which operates to the detriment of good order and discipline in the force. The Disciplinary Matrix puts all members of Service on notice of the penalty ranges for misconduct. Whether or not Respondent was eventually criminally charged, it is imperative for sworn Members of Service to adhere to Patrol Guide procedures. Patrol Guide procedure 217-02, pertaining to vehicular collisions resulting in serious injuries provides

standardized guidance to police officers on the preservation of evidence, preservation of human life and delineation of responsibilities at the scene of such an occurrence. A decision by a Member of Service to refuse a chemical test in these circumstances serves to frustrate the purpose of the Patrol Guide, based solely upon his self-interest.

Based upon the record before me, I find the 30-day suspension, previously served, to be an appropriate sanction for Respondent's misconduct. After considering the two-year period from the date of the incident to the conclusion of this hearing, Respondent's lack of a disciplinary history and his most recent performance evaluations, I do not find the imposition of a one-year period of dismissal probation to be a prudent use of Department resources.

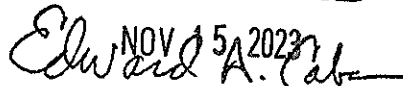
I therefore recommend a penalty of 30 suspension days, previously served.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', with a long horizontal line extending to the left.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

NOV 15 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANGELO HURTADO
TAX REGISTRY NO. 964564
DISCIPLINARY CASE NO. 2021-23492

Respondent was appointed to the Department on October 18, 2017. On his three most recent performance evaluations, he was rated “Exceptional” for 2022, and “Exceeds Expectations” for 2020 and 2021. He has been awarded three medals for Excellent Police Duty.

In connection with the instant matter, Respondent was suspended without pay from May 24, 2021 through June 22, 2021 and has remained on modified assignment thereafter. Additionally, he was placed on Level 2 Discipline Monitoring in June 2021; monitoring remains ongoing.

Respondent has no disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials